THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.1358 of 2007

Date : 18-9-2007

Between :

Prakasam District Fair Price Shop
Dealers Welfare Association .. Petitioner

And

The Government of Andhra Pradesh (F&A)
(Civil Supplies), represented by its
Secretary, Secretariat, Hyderabad
and others ..
Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.1358 of 2007

ORDER:

1. This Court issued Notice before admission on 25-1-2007 and issued *rule nisi* on 16-4-2007. A counter affidavit is filed by the 4th respondent.

2. Heard Kowturu Vinay Kumar, the learned Counsel representing the petitioner and also the learned Assistant Government Pleader for Civil Supplies.

3. The Writ Petition is filed for a Writ of Mandamus declaring the inaction of the respondents in allotting kerosene quota to the Fair Price Shop dealers of Prakasam District as per Government Memo No.1584/CS.II/94. F&CS(CS) Department dated 26-4-1994 and proceedings of the 2nd respondent issued in CCS Ref.No.PDS II(3)/6493/04 dated 27-3-2006 and allotting the entire quota including the quota of new cards to kerosene hawkers as illegal, arbitrary, discriminatory and contrary to the above proceedings and consequently direct the respondents to allot kerosene quota to the Fair Price Shop dealers for the purpose of distribution to the

card holders as per the authorization issued under A.P. Schedule Commodities (Regulation of Distribution by Card System) Order 2001 and to pass such other suitable orders.

4. It is stated that the petitioner is the President of Prakasam District Fair Price Shop Dealers Welfare Association which is a registered Association under Societies Registration Act (Act XXI of 1860) with Reg.No.187/85. It is also stated that all Fair Price Shop dealers of Prakasam District are the members in the petitioner-Association. The Writ Petition is filed being aggrieved by the inaction of the respondent Nos.3 to 5 in releasing the kerosene quota to the Fair Price shops in Prakasam District in view of Government Memo No.1584/CS.II/94. F&CS(CS) Department dated 26-4-1994 and proceedings of the 2nd respondent-Commissioner issued in CCS.Ref.No.PDS II(3)/6493/04, dated 27-3-2006. It is also further stated that in Prakasam District 200 Fair Price Shops are functioning but the respondents 3 to 5 failed to allot kerosene quota to the Fair Price Shops for the purpose of distribution to the card holders. In stead of allotting kerosene to the Fair Price Shops, the authorities respondents allotting kerosene quota to the kerosene hawkers. It is further stated that the Krishna District Fair Price Shop Dealers Welfare

Association had filed W.P.No.20474/2004 before this Court for release of kerosene quota to them and this Court on 21-1-2005 directed the 2nd respondent to consider the representation made by the said Association with regard to allotment of kerosene after hearing both the parties i.e., Fair Price Shop dealers and kerosene hawkers of Krishna District in the light of earlier observations made in W.P.No.9203/1995 dated 18-3-1996. It is also further stated that in pursuance of the said directions issued by this Court, the 2nd respondent after examining all the representations of both the parties, had issued an order dated 27-3-2006 in CCS.Ref.No.PDS II(3)/6493/04 stating that 'attachment of new cards to the Fair Price Shops only duly keeping in view of distance of the residence of the cardholders and economical viability of the Fair Price Shops concerned'. Accordingly in respect of Krishna District, the Collector had issued Circular dated 6-8-2005 stating that new cards issued under Iris image should be attached to the Fair Price Shop dealers including P.D.S. kerosene. In fact, there are specific instructions issued by the 2nd respondent in Memo No.1584/18 dated 26-4-1994 directing the Collectors not to appoint any new hawker and further specifically stated that all the commodities should be distributed through Fair Price Shop i.e., under

one roof. The intention and object in issuing the said instructions is that all the commodities should be distributed through Fair Price Shops in the interest of card holders. It is also further stated that the Fair Price Shop dealers of other Districts are getting the prescribed quota of kerosene whereas in respect of Prakasam District, the authorities are not allotting kerosene to the Fair Price Shops and the entire quota is being released in favour of hawkers which is illegal and arbitrary. It is also further stated that despite repeated request made by the petitioner as there was no response from the authorities, as a last resort the petitioner had submitted representation to the 4th respondent on 16-1-2007 and brought to their notice about the Circulars and requested to allot kerosene quota to the Fair Price Shops but no action had been taken so far. The impugned action of respondents 3 to 5 in not allotting kerosene quota to the Fair Price Shops of Prakasam District and allotting the entire quota in favour of kerosene hawkers is illegal, arbitrary, discriminatory and contrary to the instructions specified supra. The inaction of the authorities is not only affecting the rights of the petitioner's members, but also causing inconvenience to the card holders. Further, it is stated that as per the authorization issued to the Fair Price Shop dealers under clause (5) of A.P. Schedule Commodities (Regulation of

Distribution by Card System) Order 2001, the petitioner's members are entitled to distribute kerosene to the card holders. In the said circumstances, the present Writ Petition had been filed.

5. In the counter affidavit filed by the 4th respondent, it is stated that as per the Government instructions in Memo No.1584/CS.II/94 F&CS(CS) Department dated 26-4-2004 no new kerosene hawker was appointed since 1994 and in case of arising of vacancy the kerosene of such hawker was being allotted to the nearest Fair Price Shop dealer for distribution to the card holders. It is further stated that the Commissioner of Civil Supplies, A.P. Hyderabad vide Ref.No.PDS.II(3)/6493/2004 dated 27-3-2006 issued instructions to follow the instructions issued by the Government from time to time with regard to conversion of nominated retailers into Fair Price Shops, attachment of new cards to the Fair Price Shops only duly keeping in view of the distance of the residence of the cardholders and the economic viability of Fair Price Shop concerned. It is also further stated that the Commissioner of Civil Supplies, A.P. Hyderabad in reference No.N3/14032/2006 dated 9-3-2007 issued instructions that as the issue of Iris based ration cards are not yet completed, the process of transfer of cards from one shop to other need not be taken

up and hence the issue of transfer of new ration cards allotment of kerosene to Fair Price Shops as per the CCS.Ref.No.PDSII(3)/6493/2004, dated 27-3-2006 could not be taken up. It is also further stated that in Prakasam District 203 kerosene hawkers are functioning where the Fair Price Shop dealers are not allotted kerosene oil. Further, in Prakasam District, issue of new Iris cards and aggregation of data is under process and after completion of issue of Iris based ration cards in the District, attachment of new Iris cards to the Fair Price Shops will be finalized and also allotment of kerosene oil will be considered. It is also further stated that it is already mentioned that in Prakasam District, the process of issue of Iris based ration cards is under process. As per the policy of the Government, the process of rationalization of Fair Price Shops in Urban areas allotting 500 cards to each shop is also under process. The Commissioner of Civil Supplies, A.P, Hyderabad in Ref.No.N3/14032/2006 dated 9-3-2007 had issued instructions that as the completion of issue of Iris based cards is not yet completed, the process of transfer of cards from one shop to another need not be taken up. It is also further stated that the Commissioner of Civil Supplies, A.P., Hyderabad had not allotted any quantity of kerosene for distribution to the newly issued Iris cards. It is not correct to say that

kerosene is being issued to the hawkers for allotting to the new Iris card holders. After completion of the process of issue of Iris based ration cards in the District and on receipt of kerosene oil and allotment to new ration cards from the Commissioner of Civil Supplies, action will be initiated in allotting kerosene quota to Fair Price Shops as per the Government Memo No.1584/CSII/94 F&CS(CS) Department dated 26-4-1994 as per the Ref.No.PDSII(3)/6493/2004 dated 27-3-2006. It is also further stated that in Prakasam District 14 kerosene hawkers of Markapur town had approached this Court through WPMP No.34686/2006 in W.P.No.26998/2006 praying to suspend the operation of the impugned proceedings dated 27-3-2006 bearing Ref.No.PDSII(3)/6493/2004 issued by the Commissioner of Civil Supplies, A.P., Hyderabad dated 27-3-2006 and this Court granted interim direction as hereunder :

> "*There shall be an interim direction to the respondents not to disturb the cards already allotted to the petitioners for the purpose of distribution of kerosene, until further orders"*.

Further, it is stated that 11 Fair Price Shop dealers of Markapur had also approached this Court in WPMP No.30971/2006 in W.P.No.24251/2006 praying to direct the respondents to follow the instructions issued by the 1st

respondent in Circular CSS.Ref.No.PDSI(3)/18/2003 dated 15-11-2003 as reiterated in Circular CCS.Ref.No.PDSII(3)/12138/2005 dated 22-10-2005 by attaching all the new cards within the jurisdiction of the petitioner's shops by releasing the essential commodities including kerosene in favour of the petitioner's shops pending Writ Petition and this Court passed the following interim directions :

> "*There shall be interim direction to the 2nd and 3rd respondents to consider the implementation of the circular instructions issued by the 1st respondent in circular CCS.Ref.No.PDSI(3)/18/2003 dated 15-11-2003 as reiterated in circular CCS.Ref.No.PDSII(3)/12138/2005 dated 22-10-2005 by attaching all the new cards within the jurisdiction of the petitioner's shops for the purpose of distribution of essential commodities including kerosene, if the same is necessitated as per policy of the Government."*

It is also further stated that on 13-1-2007 Sri K.Subba Rao, President, Fair Price Shop Dealers Association, Prakasam District, Ongole had submitted a representation requesting to make kerosene allotment to Fair Price Shops in respect of new ration cards issued under Biometric System as per the circular instructions issued by the Commissioner of Civil Supplies, A.P., Hyderabad. In this connection, it is stated that in Prakasam District the

entire process of issue of Iris ration cards is not yet completed and similarly in Urban areas rationalization of Fair Price Shops is also going on. Since the issue of new Iris based ration cards in rural area and rationalization of Fair Price Shops in Urban areas is under process, action could not be taken on the representation of the President, Fair Price Shops Dealers Association, Ongole.

6. In the light of the respective stands taken by the parties, this Court is of the considered opinion that the Writ Petition be disposed of with a direction to take appropriate action in the light of the specific stand taken in the counter affidavit after completing the process as expeditiously as possible at the earliest point of time. No order as to costs.

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Justice P.S.Narayana

Date : 18-9-2007

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